APPENDIX A

STATUTES OR OTHER PROVISIONS INVOLVED

§ 510 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1140, is as cited by Petitioner at p. 2 of the Petition. 29 U.S.C. § 1055 (ERISA § 205), encompassing ERISA's protections of surviving spouses, provides in pertinent part as follows:

> (a) Each pension plan to which this section applies shall provide that
>
> . . .
>
> (2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.
>
> (b) (1) This section shall apply to —
>
> (A) any defined benefit plan,
>
> (B) any individual account plan which is subject to the funding standards of section 302, and
>
> (C) any participant under any other individual account plan unless —
>
> (i) such plan provides that the participant's nonforfeitable accrued benefit . . . is payable in full, on the death of the participant, to the participant's surviving spouse (or, if . . . the surviving spouse consents in the manner required under subsection (c)(2), to a designated beneficiary),
>
> . . .
>
> (c) (1) A plan meets the requirements of this section only if —
>
> (A) under the plan, each participant —
>
> (i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period . . .

. . .

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless —

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public

. . . .

§ 401(a)(11) of the Code provides in pertinent part as follows:

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY. —

(A) IN GENERAL. — In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless —

. . .

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES. — This paragraph shall apply to —

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless —

> (I) such plan provides that the participant's nonforfeitable accrued benefit . . . is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary), ...

§ 417 of the Code provides in pertinent part as follows:

(a) ELECTION TO WAIVE QUALIFIED JOINT AND SURVIVOR ANNUITY OR QUALIFIED PRERETIREMENT SURVIVOR ANNUITY. —

(1) IN GENERAL. — A plan meets the requirements of section 401(a)(11) only if —

(A) under the plan, each participant —

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period . . .

. . .

(2) SPOUSE MUST CONSENT TO ELECTION. — Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless —

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public . . . .

Treasury Regulations § 1.401(a)-20, Q&A 28 (26 C.F.R. § 1.401(a)-20, Q&A 28) provides as follows:

> Q-28: Does consent contained in an antenuptial agreement or similar contract entered into prior to

> marriage satisfy the consent requirements of sections 401(a)(11) and 417 [of the Code]?
>
> A-28: No. An agreement entered into prior to marriage does not satisfy the applicable consent requirements, even if the agreement is executed within the applicable election period.

The civil enforcement provisions of ERISA under which Respondent filed the complaint, §§ 502(a)(1)(B) and (a)(3) of ERISA, 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3), provide as follows:

> (a) A civil action may be brought —
>
> (1) by a participant or beneficiary —
>
> . . .
>
> (B) to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
>
> . . .
>
> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan . . . .

Finally, because Petitioners decry "the intrusion of ERISA into state regulation of antenuptial agreements" (Petition at 9), involved here is ERISA's pre-emption provision, § 514(a), 29 U.S.C. § 1144(a), which provides in pertinent part as follows:

> (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b).

APPENDIX B

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 3:'95 CV - 779 - S

MARIA MATTEI, - - - - - - - - - *Plaintiff*

versus

THE ESTATE OF LOUIS J. MATTEI,
RONALD MATTEI, Individually and as
Executor of the Estate of Louis J.
Mattei;
MARY LAURA MATTEI - - - - - *Defendants*

COMPLAINT—Filed November 22, 1995

Maria Mattei, for her complaint, states:

THE PARTIES

1. Plaintiff, Maria Mattei, is the widow of Louis J. Mattei, Sr. Mrs. Mattei is a party to an antenuptial contract executed by her and her late husband in Jefferson County, Kentucky on December 7, 1990.

2. Defendant, Ronald J. Mattei, is the son of Louis J. Mattei, Sr., a legatee under his will, and sole executor of his estate ("the Estate").

3. Defendant Mary Laura Mattei, is the daughter of Louis J. Mattei, Sr. and a legatee under his will.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331, 1367 and 2201

and 29 U.S.C. § 1132(a)(1)(B) and (a)(3), as this complaint seeks damages and declaratory relief based on violations of 29 U.S.C. § 1001 *et seq.* ("ERISA") and on transactionally-related, supplementary claims grounded in state law.

Plaintiff states that she has complied with the requirements of 29 U.S.C. § 1132(h) by serving a copy of this Complaint on The Honorable Robert B. Reich, United States Secretary of Labor, S2018 Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210 and on The Honorable Robert Rubin, United States Secretary of Treasury, 3330 Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(1) as the defendants reside in the Western District of Kentucky and a substantial portion of the events giving rise to this action occurred therein.

FACTUAL ALLEGATIONS

6. Louis J. Mattei, Sr., through his employer, Equifax, Inc., enjoyed the benefits of participation in a defined contribution plan which provided death benefits to a surviving spouse ("the Plan"). The Plan is both a pension plan under ERISA § 3(2) and an individual account plan under ERISA § 3(34).

7. On December 7, 1990, in Jefferson County, Kentucky, Louis J. Mattei, Sr. and Maria Mattei (then Maria Culver) entered into an antenuptial contract (the "Prenuptial Agreement").

8. The Prenuptial Agreement provided, *inter alia*, that the plaintiff, Maria Mattei, in the event she outlived Louis J. Mattei, Sr., would have the right to live in the marital residence and to receive three-hundred dollars ($300.00) per week ("the Weekly Sum"). The Weekly Sum was to be increased by six percent per year from the time of the execution of the Prenuptial Agreement.

9. Louis J. Mattei, Sr., died on December 28, 1991.

10. Beginning January 1992, the Estate commenced pay-

ing to plaintiff three-hundred dollars per week. In contravention of the terms of the Prenuptial Agreement, the defendant did not adjust the initial payments by six percent to reflect the passage of the first anniversary of the signing of the Prenuptial Agreement. The defendant Ronald Mattei's failure to adjust the amount of the disbursements properly resulted in delinquencies of $37.08 per week for the year ending December 31, 1992, $39.30 per week for the year ending December 31, 1993, and $ 42.74 per week through the 50th week of 1994.

11. On January 7, 1992, the Administrator for the Plan determined that plaintiff, Maria Mattei, was the proper recipient of the death benefits under the Plan, and on February 12, 1993 allotted these benefits to her.

12. In response to the Administrator's award of the ERISA benefits under the Plan to Mrs. Mattei, and in an attempt to fine her and discriminate against her because of her receipt of her ERISA benefits and to deprive her of these, defendant, Ronald Mattei, as executor of the Estate, ceased making weekly disbursements to Maria Mattei. The Estate has made no payments since December 17, 1994. This failure to pay has resulted in delinquencies of $378.74 per week for the last two weeks of 1994, and $ 401.47 per week through the end of 1995.

FIRST CAUSE OF ACTION - INTERFERENCE WITH PROTECTED RIGHTS

13. Plaintiff reiterates the allegations contained in numerical paragraphs 1-12 the same as if set out herein.

14. The defendant's denial of weekly disbursements to Mrs. Mattei was made for the purpose of depriving her of her interest in the Plan's benefits for surviving spouses and to fine her and to discriminate against her for exercising her rights under the Plan.

15. By so acting, defendant, as the executor of the estate of Louis J. Mattei, violated the provisions 29 U.S.C. § 1140. Plaintiff, Maria J. Mattei is entitled, pursuant to 29 U.S.C. § 1132(a)(1)(A) and (a)(3), to enforce those pro-

visions through a civil action.

SECOND CAUSE OF ACTION - BREACH OF GOOD FAITH AND FAIR DEALING

16. Plaintiff adopts the allegations contained in numerical paragraphs 1-15 the same as if set out herein.

17. The Prenuptial Agreement provides that it is to be governed by Kentucky law, and pursuant to that law contains an implied covenant of good faith and fair dealing ("the Covenant").

18. As executor of the Estate, the Covenant is binding on Ronald Mattei.

19. Ronald Mattei, for the purpose of depriving plaintiff of the benefits of the Plan, has refused to make weekly disbursements to the plaintiff as is required under the terms of the Prenuptial Agreement.

20. By virtue of the provisions of 29 U.S.C. § 1055, Maria Mattei retained the right to enjoy the benefits of the Plan, and her right to enjoy these benefits is retained and not waived under the terms of the Prenuptial Agreement.

21. The defendant, Ronald Mattei, by acting for the purpose of depriving Maria Mattei of the enjoyment of rights she retained under the Prenuptial Agreement, has breached the duty of good faith and fair dealing under the Prenuptial Agreement, and Maria Mattei has been injured thereby and the defendant, Ronald Mattei, is liable for actual and exemplary damages.

THIRD CAUSE OF ACTION - BREACH OF CONTRACT

22. Plaintiff adopts the allegations contained in numerical paragraphs 1-21 the same as if set out herein.

23. The Prenuptial Agreement obligates the Estate to pay to Maria Mattei the sum of $300 per week, increased by six percent per year from December 7, 1990. The defendant, Ronald Mattei, as executor of the Estate, breached the Prenuptial Agreement by refusing to make weekly disbursements beginning December 17, 1994.

24. The defendant Ronald Mattei, further breached the Prenuptial Agreement by failing to adjust the weekly disbursal to reflect the six percent per year increase.

25. By virtue of these breaches, defendant has wrongfully denied Plaintiff disbursements totaling $22,559.57, the present value of which was $23,372.41 as of September 30, 1995. This breach is ongoing and plaintiff continues to suffer deprivation of income thereby.

FOURTH CAUSE OF ACTION - DECLARATORY RELIEF

26. Plaintiff adopts the allegations contained in numerical paragraphs 1-25 the same as if set out herein.

27. Pursuant to the guarantees of 29 U.S.C. § 1055, the Prenuptial Agreement of December 7, 1990 was ineffective to waive Maria Mattei's rights to ERISA benefits as the surviving spouse of Louis J. Mattei, Sr.

28. As the Prenuptial Agreement was not effective to waive plaintiff's rights to ERISA benefits, her acceptance of the benefits under the Equifax Plan does not affect the validity of the Prenuptial Agreement or the obligations created thereunder.

29. Pursuant to 28 U.S.C. § 2201, this Court should declare that the Prenuptial Agreement and the obligations of the Estate created thereunder remain unaffected by Maria Mattei's acceptance of ERISA benefits under the Plan and that Ronald Mattei, as

executor of the Estate, should comply with the weekly disbursal requirements of the Prenuptial Agreement.

FIFTH CAUSE OF ACTION - DECLARATORY RELIEF

30. Plaintiff adopts the allegations contained in numerical paragraphs 1-29 the same as if set out herein.

31. The defendant, Ronald Mattei, as executor of the Estate, beginning December 17, 1994, has refused to make any weekly disbursements to Maria Mattei.

32. Because the Agreement of December 7, 1990 was ineffectual to waive Maria Mattei's rights to ERISA benefits as the surviving spouse of Louis J. Mattei, Sr., her

acceptance of those benefits does not affect the enforceability of the Prenuptial Agreement; neither does it excuse the defendant's refusal to perform under the Prenuptial Agreement.

33. The defendant's refusal to perform is a material breach of the Prenuptial Agreement, entitling Maria Mattei to declare the Prenuptial Agreement of no further effect and to claim her statutory and common law rights as the widow of Louis J. Mattei, Sr. to the same extent as if the Prenuptial Agreement were never executed.

34. Pursuant to 28 U.S.C. § 2201, this Court should declare that Maria Mattei may opt to claim her statutory and common law rights as the widow of Louis J. Mattei, and that, in that event, the Estate should be executed in accordance with those rights.

WHEREFORE, the plaintiff, Maria Mattei demands:

1. A declaration that Ronald Mattei, as executor of the estate of Louis J. Mattei, Sr. must administer the Estate in accordance with the weekly disbursal requirements of the Prenuptial Agreement;

2. A declaration that the Ronald Mattei has materially breached the Prenuptial Agreement and that Maria Mattei is now entitled to declare the Prenuptial Agreement terminated and to take her statutory and common law share in the Estate to the same extent as if the Prenuptial Agreement were never executed;

3. Actual and exemplary damages against the Estate and against Ronald Mattei as the executor of the Estate;

4. Her costs and fees incurred herein;

5. Reasonable attorney's fees

6. An [sic] and all other relief to which she may appear entitled.

Respectfully submitted,

/s/ Susan Canter Reisner
Robert W. Griffith
Susan Canter Reisner
Michael I. Kanovitz
STITES & HARBISON
400 West Market Street
Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400
COUNSEL FOR PLAINTIFF,
MARIA MATTEI

APPENDIX C

ANTENUPTIAL CONTRACT MATTEI & CULVER

That whereas, LOUIS J. MATTEI, SR., party of the first part, and MARIA CULVER, party of the second part, are about to enter the marriage relationship; and whereas, they are desirous, before doing so, to establish their respective rights to each other's property; NOW therefore, be it known that it is hereby agreed by and between the said LOUIS J. MATTEI, SR., and MARIA CULVER, that all property and estate, wherether [sic] real, personal, or mixed, which either party may at present own, be entitled to, or may hereafter acquire, shall go to each party's respective children, except as follows:

1. In the event of the death of the first party after the marriage takes place, the second party is to be paid from my Estate the sum of $ 300.00 per week for support during her natural life, unless she dies or re-marries. This amount is to be increased once a year for inflation by six percent per year; and

2. The second party shall have the right to live in the first party's residence known as 4414 Brookhaven Avenue, Louisville, Kentucky, until her death or re-marriage, with all mortgage payments, roofing, plumbing (to include the water heater), furnace and air conditioning maintenance to be paid from the Estate of first party; unless she dies or re-marries.

3. The second party will make no claims against the first party or his Estate (but the first party reserves the right to leave gifts in his Will of a testamentary nature to the second party and the second party may accept such testamentary gifts as an exception to this provision), heirs, or administrators, in the event of divorce or death, and this agreement is made binding on her heirs, assigns, Estate, and administrators, and is a complete relinquishment of all common law dower, descent and distribution and homestead, or any other claim or right in law or equity she may have.

4. First party agrees to make no claim whatsoever at common law or equity or curtsey [sic] or under descent and distribution laws against the property of second party, and hereby binds his Estate, administrators, heirs and assigns.

5. Both parties have made a disclosure of assets to each other and acknowledge that Kentucky law is the controlling law of this contract.

WITNESS THE SIGNATURES of the parties hereto this 7 day of Dec., 1990.

/s/ Louis J. Mattei, Sr.
LOUIS J. MATTEI, SR., First Party
/s/ Maria Culver
MARIA CULVER, Second Party

Subscribed and sworn to in Jefferson County, Kentucky, by [LOUIS J. MATTEI, SR. and MARIA CULVER] the foregoing Parties as their free act and deed this 7 day of December, 1990.

My commission expires: _____.

Notary Public, State at Large, KY.

My commission expires Aug. 27, 1994

/s/ Margaret A. Pate
NOTARY PUBLIC, Kentucky State at Large or Jefferson County

Prepared by:

/s/ Richard C. Porter, Jr.
Richard C. Porter, Jr.
Attorney at Law
1077 Starks Building
Louisville, KY 40202

APPENDIX D

[LETTERHEAD OF RICHARD C. PORTER, JR., ATTORNEY AT LAW]

February 17, 1992

Adolyn R. Johnston

Equifax, Inc.

1600 Peachtree St., N.W.

Atlanta, GA 30309

Dear Ms. Johnston:

Re: Estate of Louis J. Mattei

Thank you for your idtiuacy 24th response to our inquiry about the unpaid salary owed Mr. Mattei and the Equifax Thrift Plan.

Notwithstanding your Company policy, this is a formal demand that you pay the salary and vacation compensation due Louis J. Mattei by sending a check forl,the net to me for my client. The said check should be payable either to him personally or to "The Estate of Louis J. Mattei."

In regard to the Thrift Plan, we believe the Antenuptial Contract, signed by Maria C. Matteit and notarized and recorded in the offi cial records of the County Court Clerk of Jefferson County, Louisville, Kentucky (which you were furnished a copy of in January) comports with the section 7.8 (a) which you furnished to me. Maria C. Mattei consented on Dec. 7, 1990, before a Notary Public to make no demands on Louis J. Rat-teils property whatsoever, no matter what kind. She might be signing a release, but regardless, this is a formal demand that the Thrift Plan be released to his designated beneficiaries (assuming his children are named) or to his Estate if none be designated.

Awaiting your reply, I am

Sincerely yours,

/s/ Richard C. Porter, Jr.

Richard C. Porter, Jr.

cc: Ronald J. Mattei, Executor

2130 W. Horizon Drive

Hebron, KY 41048

cc: file #1353.2

APPENDIX E

[LETTERHEAD OF EQUIFAX, INC.]

March 6, 1992

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Richard C. Porter, Jr., Esq.

Starks Building

Louisville, KY 40202

RE: Estate of Louis J. Mattei, Sr.

Dear Mr. Porter:

This letter is in response to your letter of February 17, 1992 requesting that Mr. Mattei's account in the Equifax Inc. Employees Thrift Plan (the "Plan") be paid to Mr. Mattei's children or to his estate, which you represent.

We are considering your letter to be a claim for benefits under the Plan within the meaning of section 503 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. §1133). For the following reasons, the Committee that administers the Plan has determined that it is required to deny your client's claim.

Section 7.8(a) of the Plan states that upon the death of a married participant, the participant's vested account balance will be paid to the surviving spouse, unless there is no surviving spouse or unless the surviving spouse has consented in writing which is witnessed by a Plan representative or a notary public to the designation by the participant of another beneficiary.

In your letter of February 17, you state that you believe that the Antenuptial Contract (the "Contract") executed by Mr. Mattei and Maria Mattei (Maria Oliver [sic] at the time) on December 7, 1990, prior to their marriage, comports with Section 7.8(a). The Contract, which appears to have been notarized, states that Mrs. Mattei "will make no claims against (Mr. Mattei) or his Estate..., heirs, or administrators, in the event of divorce or death, and this agreement is made binding on her heirs, assigns, Estate,

and administrators, and is a complete relinquishment of all common law dower, descent and distribution and homestead, or any other claim or right in law or equity she may have." Note that the Contract does not mention the Plan in any way, directly or indirectly, and the Contract does not indicate Maria Mattei's consent to the designation of another beneficiary.

Whatever the intent of the parties may have been, the Contract clearly fails to comport with Section 7.8(a) in that there is no consent to the designation of a beneficiary other than the spouse under the Plan.

Section 7.8(a) of the Plan must be construed in accordance with applicable requirements of ERISA and the Internal Revenue Code of 1986, as amended (the "Code"). As stated in Section 12.7 of the Plan, the Plan is intended to meet the requirements of ERISA and the qualifications for exemption under Code §401(a).

The provisions of Section 7.8(a) are required by Code §401(a)(11) (26 U.S.C. §401(a)(11), which requires qualified plans to pay benefits to a married participant in the form of a joint and survivor annuity. The Plan must provide that, upon the death of a participant, benefits are paid to the participant's surviving spouse unless the surviving spouse consents to the designation of another beneficiary in the manner required under Code §417(a)(2).

Code §417(a)(2) (26 U.S.C. B§417(a)(2)) provides that a participant's designation of a nonspouse beneficiary is not effective unless "(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or notary public."

In construing these statutory provisions, Treas. Reg. §l.401(a)-20 (26 C.F.R. §l.401(a)-20) sets forth detailed re-

quirements governing the form which a waiver of the spousal death benefit must meet. The Contract clearly fails to meet the requirements set forth in these regulations. Significantly, Question 28 under Tres. [sic] Reg. §1.401(a)-20 expressly provides that a consent contained in an antenuptial agreement or similar contract does not satisfy the applicable consent requirements of Code §§401(a)(11) and 417. In addition, the Contract fails to expressly designate a specific nonspouse beneficiary as required by Question 32 of the regulation.

In conclusion, the Contract not only fails to satisfy the exact provisions of the Plan in Section 7.8(a) by failing to designate an alternate beneficiary, but the Contract also fails to satisfy Sections 7.8(a) and 12.7 in that Treasury regulations clearly provide that consent in that antenuptial agreement cannot satisfy the requirements of Code §§401(a)(11) and 417 and the Plan must be interpreted in accordance with such requirements. Therefore, your claim must be denied. The proper beneficiary under the Plan with respect to Mr. Mattei's account balances is his surviving spouse, absent a proper spousal waiver.

In accordance with ERISA §503 and DOL Reg. §2560.503-1 (29 C.F.R. §2560.5O2-1), you (on behalf of your client) have a right to appeal the denial of your claim. The appeals procedure is set forth in Section 10-7 [sic] of the Plan, a copy of which is enclosed. If you do determine to appeal, Section 10.7 requires that you file a written statement requesting review of the decision within sixty (60) days of the date you receive this notice of denial.

Sincerely,

Adolyn R. Johnston
Director-Benefits Administration

cc: Ronald J. Mattei, Executor
2130 W. Horizon Drive
Hebron, KY 41048

Maria Mattei
4414 Brookhaven Ave
Louisville, KY 40220

APPENDIX F

[LETTERHEAD OF RICHARD C. PORTER, JR.,
ATTORNEY AT LAW]

August 5, 1992

Equifax, Inc.
P.O. BOX 4081
ATLANTA, GA 30302

ATTN: Tom Brophy, Benefits

RE: Thrift Plan/Louis J. Mattei

Dear Mr. Brophy:

Acknowledging receipt of you letter on August 3, 1992, I must object to the position Equifax is taking concerning the requested information and the Thrift Plan. In Kentucky, the executor of an estate stands in the position of the deceased person. This means that if Louis J. Mattei was entitled to receive a copy of the Thrift Plan holdings in his plan, so is his Executor. Furthermore, we have challenged your interpretation that Maria Mattei is beneficiary of the said Plan.

My client is prepared to file suit against Equifax in this regard to compel an accounting and obtain a judgment accordingly. Be advised Maria Mattei will be joined in any such lawsuit and she may be very displeased at having to litigate this as well. Is this your final decision to withhold the information? If you have any document signed by Louis Mattei designating Maria Mattei. As his beneficiary, you should produce it forthwith.

We will give you until August 19th to comply, or suit shall follow without further notice.

Sincerely,

/s/ Richard C. Porter, Jr.
Richard C. Porter, Jr.

cc: Ronald J. Mattei, Executor
2130 W. Horizon Drive
Hebron, KY 41048

cc: William J. Cooper, Jr.
2350 Meidinger Tower

APPENDIX G

[LETTERHEAD OF JONES, DAY, REAVIS & POGUE, ATLANTA, GA.]

August 19, 1992

VIA FEDERAL EXPRESS

Richard C. Porter, Jr., Esq.
Starks Building
Louisville, Kentucky 40202

Re: Estate of Louis J. Mattei

Dear Mr. Porter:

As counsel for the Plan, we have been asked to respond to your letter dated August 5, 1992, in which you, on behalf of your client, the Estate of Louis J. Mattei, deceased, have threatened suit against Equifax Inc. ("Equifax") regarding your client's claim (i) to the death benefit available under the Equifax Inc. Employees Thrift Plan (the "Plan") with respect to Mr. Mattei, and (ii) to certain valuation information with respect to Mr. Mattei's benefit.

My intention was to telecopy this response to you today in order to meet your August 19, 1992 deadline, but I have been unable to discover if you have a telecopier and I have been unable to contact your office, except to leave a voice mail message. Therefore I am sending this response by overnight delivery.

With respect to your request for "the value of the Thrift Plan as of December 28, 1991," by your letter dated July 28, 1992, the Plan Administrator will provide you with the value of Mr. Mattei's account balances under the Plan as of the Plan's valuation date which coincides with or immediately precedes Mr. Mattei's date of death (December 28, 1991). Mr. Mattei should have received annual statements giving annual valuations, and, even if you cannot locate such statements, I recognize that you must have this information to properly complete Mr. Mattei's estate tax returns. This information will follow shortly by separate letter; however, if you must have it sooner, please let me know.

Your request that Mr. Mattei's estate be recognized as the sole beneficiary under the Plan with respect to Mr. Mattei's account balances is another matter. My understanding is that by letter dated January 21, 1992 (copy attached as Exhibit A), you were informed that the proper death beneficiary under the Plan with respect to Mr. Mattei's account balances was his surviving spouse, Maria C. Mattei. By letter dated February 17, 1992 (copy attached as Exhibit B), you, on behalf of your client, filed a claim for benefits, submitting an antenuptial contract dated December 7, 1990 (the "Antenuptial Contract") by which you claimed Maria Mattei waived her right to be the death beneficiary and receive Mr. Mattei's account balances under the Plan. By letter dated March 6, 1992 (copy attached as Exhibit C), you were advised that your claim for benefits on behalf of your client had been denied and you were advised of your right to appeal. No further correspondence was received from you until July 28, 1992 (over four months later), when you requested information concerning Mr. Mattei's account balance under the Plan for purposes of properly filing estate tax returns (copy of such correspondence attached as Exhibit D). Your July 28th letter did not indicate any dissatisfaction by you with the previous denial of your client's claim. By letter dated July 31,.1992 (copy attached as Exhibit E), you were informed that Maria Mattei, as beneficiary under the Plan, would have the valuation information you were seeking. Now, by letter dated August 5, 1992 (copy attached as Exhibit F), you are apparently asking for an appeal of your client's claim denial, expressing dissatisfaction with the earlier benefit denial determination, and threatening to sue Equifax if there is no compliance with your demands.

With respect to your client's claim for benefits, I believe that the reasons for the denial of such claim are adequately stated in the letter you received dated March 6, 1992:

> Section 7.8(a) of the Plan states that upon the death of a married participant, the participant's vested account balance will be paid to the surviving spouse,

unless there is no surviving spouse or unless the surviving spouse has consented in writing which is witnessed by a Plan representative or a notary public to the designation by the participant of another beneficiary.

In your letter of February 17, you state that you believe that the Antenuptial Contract (the "Contract") executed by Mr. Mattei and Maria Mattei (Maria Oliver [sic] at the time) on December 7, 1990, prior to their marriage, comports with Section 7.8(a). The Contract, which appears to have been notarized, states that Mrs. Mattei "will make no claims against (Mr. Mattei) or his Estate.... heirs, or administrators, in the event of divorce or death, and this agreement is made binding on her heirs, assigns, Estate, and administrators, and is a complete relinquishment of all common law dower, descent and distribution and homestead, or any other claim or right in law or equity she may have." Note that the Contract does not mention the Plan in any way, directly or indirectly, and the Contract does not indicate Maria Mattei's consent to the designation of another beneficiary.

Whatever the intent of the parties may have been, the Contract clearly fails to comport with Section 7.8(a) in that there is no consent to the designation of a beneficiary other than the spouse under the Plan.

Section 7.8(a) of the Plan must be construed in accordance with applicable requirements of ERISA and the Internal Revenue Code of 1986, as amended (the "Code"). As stated in Section 12.7 of the Plan, the Plan is intended to meet the requirements of ERISA and the qualifications for exemption under Code §401(a).

The provisions of Section 7.8(a) are required by Code §401(a)(11) (26 U.S.C. §401(a)(11), which requires qualified plans to pay benefits to a married participant in the form of a joint and survivor annuity. The Plan must provide that, upon the death of a participant, benefits are paid to the participant's surviving spouse unless the surviving spouse consents to the designation of another beneficiary in the manner required under Code §417(a)(2).

> Code §417(a)(2) (26 U.S.C. §417(a)(11) provides that a participant's designation of a nonspouse beneficiary is not effective unless "(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or notary public."
>
> In construing these statutory provisions, Treas. Reg. §1.401(a)-20 (26 C.F.R. §1.401(a)-20) sets forth detailed requirements governing the form which a waiver of the spousal death benefit must meet. The contract clearly fails to meet the requirements set forth in these regulations. Significantly, Question 28 under Tre[a]s. Reg. §1.401(a)-20 expressly provides that a consent contained in an antenuptial agreement or similar contract does not satisfy the applicable consent requirements of Code §§401(a)(11) and 417. In addition, the Contract fails to expressly designate a specific nonspouse beneficiary as required by Question 32 of the regulation.
>
> In conclusion, the Contract not only fails to satisfy the exact provisions of the Plan in Section 7.8(a) by failing to designate an alternate beneficiary, but the Contract also fails to satisfy Sections 7.8(a) and 12.7 in that Treasury regulations clearly provide that consent in that antenuptial agreement cannot satisfy the requirements of Code §§401(a)(11) and 417 and the Plan must be interpreted in accordance with such requirements. Therefore, your claim must be denied. The proper beneficiary under the Plan with respect to Mr. Mattei's account balances is his surviving spouse, absent a proper spousal waiver.

The Treasury regulation cited in the letter states:

> Q-28: Does consent contained in an antenuptial agreement or similar contract entered into prior to marriage satisfy the consent requirements of sections 401(a)(11) and 417?

> A-28: No. An agreement entered into prior to marriage does not satisfy the applicable consent requirements, even if the agreement is executed within the applicable election period.

Treas. Reg. §1.401(a)-20(Q&A-28) (copy attached as Exhibit G). This regulation is precisely on point.

You should also note that compliance with the requirements of the Internal Revenue Code discussed in the above passage is also required of employee pension benefit plans by analogous provisions in ERISA §205(c)(2) (29 U.S.C. §1055(c)(2)), and that the regulations issued by the Secretary of the Treasury and discussed above would be equally applicable in construing the analogous ERISA provisions according to Section 101 of the Presidential Reorganization Plan No. 4 of 1978 (See 43 F.R. 47713 (October 17, 1978)). Therefore, it would appear clear under applicable federal law and regulations that Maria Mattei is the proper beneficiary for Mr. Mattei's account balances under the Plan.

Additionally, I would refer you to Hurwitz v. Sher, 789 F. Supp. 134 (S.D. N.Y. 1992) (copy enclosed as Exhibit H). In this case, which is directly on point, the son of a deceased employee sought plan benefits, and argued that an antenuptial agreement should be enforced, and state law should govern the determination of the proper beneficiary. On motions for summary judgment filed by both sides, the court ruled for the spouse as the sole beneficiary. The Hurwitz case demonstrates that there is no statutory, regulatory or case law support for your client's claim.

Additionally, because of your failure to appeal from the denial of your client's claim within 60 days of your receipt of such denial on March 10, 1992, you have failed to exhaust your client's administrative remedies under the Plan. You were notified in the March 6, 1992 letter that, pursuant to ERISA §503 and DOL Reg. §2560.503-1, you (on behalf of your client) had 60 days from the date you received notice of the denial to appeal. The return receipt indicates that you were notified of the denial on March 10,

1992, and your 60 days to appeal from this denial have long since expired. No further correspondence was received from you until July 28, 1992, when you asked for certain Plan information in connection with Mr. Mattei's account balances, and that letter in no way indicated your dissatisfaction with the denial of your client's claim on March 6, 1992. Therefore any action for benefits by your client at this time would be untimely. See e.g., Springer v. Wal-Mart Associates' Group Health Plan, 908 F.2d 897 (11th Cir. 1990).

As you may know, ERISA §514(a) (29 U.S.C. §1144(a)) provides that Titles I and IV of ERISA "supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan...." Therefore, the resolution of all questions under ERISA, such as those raised in your claim, is within the jurisdiction of the federal court system, and is governed by the provisions of ERISA. Any state law, Kentucky or otherwise, which could be construed to govern the determination of a beneficiary under an ERISA plan would therefore be preempted. See Pilot Life Insurance Company v. Dedeaux, 481 U.S. 41 (1987).

If you should decide to file suit on behalf of your client against the Plan for Mr. Mattei's death benefit, then, in view of the overwhelming authority contrary to your position, the Plan will be forced to seek attorneys' fees and costs from your client pursuant to ERISA §502(g) (29 U.S.C. §1132(g)), in addition to any similar recourse available under the laws of the jurisdiction in which you file suit. It is not fair that Plan participants and beneficiaries should suffer any loss due to frivolous litigation involving the Plan, and the Plan will, on behalf of its participants and beneficiaries, attempt to recover any costs incurred defending frivolous litigation.

You should also be aware that, by letter dated August 12, 1992 (copy attached as Exhibit I), we have been notified by Mr. William J. Cooper, Jr., representing Maria Mattei, that he has agreed with our position with respect to your claim. Therefore, you can expect the joinder of

Maria Mattei in any lawsuit claiming Plan benefits for your client.

Mr. Porter, I sincerely hope that we can avoid the expensive costs of what I firmly believe (and hope that you will agree) is unnecessary litigation expense involved in a federal court action for benefits on behalf of your client. I therefore urge you to strongly consider the above-discussed matters in assessing the strength of your client's claim. Should you not do so, and should my client be forced to incur costs and attorneys' fees, I will be forced to attempt recovery of such costs and fees from your client as outlined above, so that the Plan participants and beneficiaries will not unfairly suffer such costs. If I may be of assistance in further explaining the denial of benefits, please let me know.

Sincerely,

/s/ Bruce H. Wynn

Bruce H. Wynn

Attachments

cc: William J. Cooper, Jr., Esq. (Via Federal Express)
(Counsel for Maria C. Mattei)
James H. Landon, Esq.
Donald A. Loft, Esq.

APPENDIX H

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
CIVIL SUMMONS

JEFFERSON CIRCUIT COURT

DIVISION ONE (1)

No. 93CI00147

ESTATE OF LOUIS J. MATTEI, SR.
by Ronald J. Mattei, Executor - - - - *Plaintiff*

vs.

EQUIFAX, INC., a Corporation - - - *Defendant*

Serve: Art Payne, Manager
Suite 1052, 10th Floor, Starks Building
Louisville, KY 40202

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that a legal action has been filed against you in this court demanding relief as shown on the document delivered to you with this summons. Unless a written defense is made by you or by an attorney in your behalf within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the parties demanding such relief against you or his (their) attorney(s) are shown on the document delivered to you with this summons.

Date: January 12, 1993

Clerk: Tony Miller, Clerk
Jefferson Circuit Court

By:_____D.C.

JEFFERSON CIRCUIT COURT

DIVISION ONE (1)

No. 93CI00147

ESTATE OF LOUIS J. MATTEI, SR.
by Ronald J. Mattei, Executor - - - - *Plaintiff*

vs.

EQUIFAX, INC. - - - - - - - - *Defendant*

Serve: Art Payne, Manager
10th floor, Starks Building
Louisville, KY 40202

COMPLAINT

Comes plaintiffs by counsel, and for its complaint states as follows:

1. Plaintiff is executor of his late father's estate and files herewith a copy of his Qualification as Executor.

2. Louis J. Mattei, Sr., was a salaried employee of the Defendant corporation at the time of his death and had unpaid salary and vacation pay owed to decedent at the time of his death on 12-28-91 in the amount of $7,084.00.

3. Defendant is a corporation with home offices in Atlanta, Georgia.

4. Plaintiff, by counsel, has made several demands on Defendant to pay over the salary due decedent, but defendant has ignored or refused to do so.

5. Plaintiff should have judgment against the defendant for $7,084.00 together with interest at 12% per year from the date the salary was due decedent until paid.

6. Decedent had a certain retirement plan known as a "thrift plan with defendant corporation.

7. Defendant has refused to disclose the contents of said "Plan" and the valuation thereof as of the date of death,

8. Decedent would be entitled to know what was in his said retirement/thrift plan and the value thereof. Plaintiff stands in place of decedent and is entitled to said accounting.

WHEREFORE, Plaintiff, by counsel, demands judgement against the Defendant as follows:

1. A money judgement for $7,084.00 plus 12% per annum interest from 12-28-91 until paid;

2. For all of the court costs of this action;

3. For a full and complete accounting of all items and values thereof held in the "thrift plan" of decedent with Defendant.

/s/ Richard C. Porter
Attorney at Law
1077 Starks Building
Louisville, Ky. 40202
584-7284
Counsel for Ronald J.
Mattei, Executor of the
Estate of Louis J. Mattei

cc: file #13 5 3.2
disc #6

APPENDIX I

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is made and entered into this _____ day of March, 1993, by and among the Estate of Louis J. Mattei, Sr. ("The Estate"), Ronald J. Mattei ("Ronald Mattei"), and Equifax, Inc. ("Equifax").

W I T N E S S E T H:

WHEREAS, Louis J. Mattei, Sr. died on December 28, 1991; and WHEREAS, Ronald Mattei has been appointed as the Executor of The Estate; and

WHEREAS, Louis J. Mattei, Sr. was employed by Equifax at the time of his death and was a participant in the Equifax, Inc. Employees Thrift Plan (the "Plan") at the time of his death; and

.WHEREAS, The Estate and Ronald Mattei contend that Louis J. Mattei, Sr. was entitled to receive compensation in the amount of $7,084.00 for ten (10) days of accrued salary and twenty-five (25) days of accrued vacation at the time of his death; and

WHEREAS, The Estate has filed suit against Equifax in Jefferson County, Kentucky, styled Estate of Louis J. Mattei, Sr. by Ronald J. Mattei, Executor vs. Equifax, Inc., Civil Action No. 93CI00147, Jefferson Circuit Court, Commonwealth of Kentucky ("The Civil Action"), seeking to recover this allegedly accrued but unpaid salary and vacation compensation; and

WHEREAS, The Estate and Ronald Mattei also contend that The Estate is also entitled to recover certain benefits under the Plan; and

WHEREAS, Equifax denies that The Estate is entitled to any benefits under the Plan; and

WHEREAS, The Estate and Ronald Mattei are legally competent to enter into this Release and Settlement Agreement; and

WHEREAS, The Estate and Ronald Mattei desire to compromise and settle any and all past, present or future

claims or disputes they have or may have against Equifax, except for any claim they may have for benefits under the Plan as set forth specifically herein;

NOW, THEREFORE, the parties do hereby agree as follows:

1.

For and in consideration of the payment of seven thousand one hundred seventy-two dollars ($7,172.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The Estate and Ronald Mattei do hereby, for and on behalf of themselves, their heirs, assigns, executors, administrators, beneficiaries, representatives, and successors, fully and finally release, acquit and forever discharge Equifax, its past and present officers, directors, agents, employees, servants, attorneys, and representatives, and any of Equifax's parents, subsidiaries or other affiliated corporations, as well as their past and present officers, directors, employees, agents, employees, servants, representatives, and attorneys, of and from any and all claims, counterclaims, actions, causes of action, demands, rights, damages, costs, expenses or compensation which The Estate and Ronald Mattei, individually or jointly, now have, may have, or may hereinafter claim to have, whether developed or undeveloped, anticipated or unanticipated, including but not limited to any and all claims that were asserted or could have been asserted in The Civil Action, but specifically excluding any claim which could have been asserted against Equifax for benefits under the Plan.

2.

Notwithstanding the generality of paragraph 1 above or without limiting the foregoing paragraph except as expressly and specifically stated in this paragraph, is understood and agreed that this Release and Settlement Agreement is not, and shall not be construed to be, a release with respect to any claim that The Estate and/or Ronald Mattei may have for benefits under the Plan. It is expressly understood and agreed that the preceding described

claim or possible claim for benefits under the Plan is the only claim excepted from the operation of this Release and Settlement Agreement.

3.

The Estate and Ronald Mattei hereby agree to dismiss The Civil Action with prejudice within three days of executing this Release and Settlement Agreement.

4.

The parties to this agreement hereby warrant, covenant, and represent that prior to the execution of this Release and Settlement Agreement, they have not conveyed, transferred, pledged, hypothecated, or in any manner whatsoever assigned or encumbered any of the rights, demands, claims, suits, actions, or causes of action released herein.

5.

This Release and Settlement Agreement is to compromise disputed claims. All parties hereto agree, understand, and acknowledge that no party admits or acknowledges any liability whatsoever to any other party and, further, that all parties deny any such liability. Nothing in this Release and Settlement Agreement is to be construed as an admission of liability on the part of any party.

6.

Each party agrees, understands, and acknowledges that each party is responsible for their own attorneys' fees, costs and all other expenses arising from, or in any way related to claims released herein.

7.

This Release and Settlement Agreement constitutes the entire agreement and understanding among the parties, and all previous discussions, understandings, representations, negotiations and agreements with respect to the matters included in this Release and Settlement Agreement are merged herein.

8.

The parties agree that the terms of this Release and Settlement Agreement are contractual and not merely re-

citals, and that they shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, transferees, successors, assigns, and affiliates. Wherever in this Release and Settlement Agreement reference is made to any signatory or other person or entity, such reference shall be deemed to include a reference to the heirs, executors, representatives, successors, assigns, and affiliates of such signatory or other person or entity. Notwithstanding anything herein to the contrary, this Release and Settlement Agreement shall be fully enforceable by any party in any action at law or in equity, and nothing contained herein shall preclude or be construed to preclude any action in law or in equity to enforce the provisions of this Release and Settlement Agreement.

9.

All parties hereby acknowledge that each has been represented by counsel in the negotiation of this Release and Settlement Agreement and that each understands the provisions of this Release and Settlement Agreement and acknowledges that the legal effects thereof have been fully explained to them. Further, the parties acknowledge that they have entered into this Release and Settlement Agreement freely and voluntarily and without coercion or undue influence.

10.

The parties agree that this Release and Settlement Agreement was negotiated between them. As a result, the parties agree that, in the event of a dispute about the meaning, construction, or interpretation of this Release and Settlement Agreement, no presumption shall apply to construe the language of this Release and Settlement Agreement either for or against any party.

This Release "and Settlement Agreement may not be changed orally, but only by a writing signed by the parties hereto.

[copy out]

3503:mkt
974447-050-014
(404) 581-8953

12.

~~This Release and Settlement is to be construed in accordance with the laws of the State of Georgia.~~ /s/ R.J.M.

The Estate of Louis J. Mattei

By: /s/ Ronald J. Mattei
Ronald J. Mattei
Executor

Sworn to and sibscribed before me this 12 day of April, 1993.

/s/ M E Emerson
Notary Public
4-17-96

/s/ Ronald J. Mattei, Executor
Ronald J. Mattei

Sworn to and subscribed before me this 12 day of April, 1993.

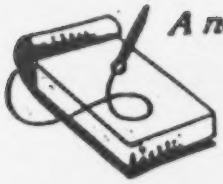
/s/ M E Emerson
Notary Public
4-17-96

EQUIFAX, INC.
By: /s/ Nancy S. Arnett
Title: Vice President

Sworn to and subscribed before me this 28th day of April, 1993.

/s/ Kathy (Illegible)
Notary Public

APPENDIX J



Rec'd the
Nov.
1992

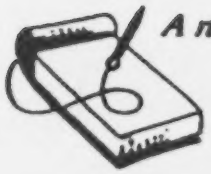
MARIE,

How is the T.V. SITUATION coming? LET ME KNOW IF IT'S NOT, AND I'LL TRY TO GET IN TOUCH WITH THE LADY AT MAGNAVOX.

WE NEED TO DO SOMETHING WITH THE WHITE CAR, THE INSURANCE IS COMING DUE AGAIN. DO YOU KNOW ANYBODY WHO WANTS TO BUY IT?

ALSO HAVE YOU SIGNED THE PAPERWORK NEEDED BY EQUIFAX FOR THE THRIFT PLAN?

I'M TRYING TO GET ALL OF DADS ITEMS TRANSFERED TO MY ADDRESS, SORRY FOR THE INCONVENIENCE OF HAVING TO SEND THEM

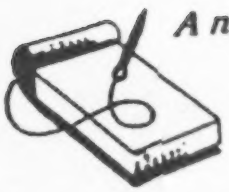


ANY DOCTOR/HOSPITAL BILLS COME TO BROOKHAVEN, I'M TRYING TO GET THEM CHANGED A.S.A.P.

LET ME KNOW IF YOU HAVE ANY QUESTIONS.

I'M GOING TO TRY TO SEE TOOTS THIS WK, AND I'LL BE BACK BY NEXT WEEKEND, IN CASE YOU TRY TO REACH ME THIS WK.

THANKS
R-



A note from

RON MATTEI

Rec. 8/19/92

MARIE,
WILL YOU LET ME
KNOW IF YOU HAVE
SIGNED THE PAPERS THAT
EQUIFAX NEEDED TO FORWARD
THE THRIFT PLAN TO THE
ESTATE. PER DADS WISHES,
OR HAVE THEY SENT
THEM TO YOU YET.?

THANKS
R. M.

APPENDIX K

[LETTERHEAD OF JONES, DAY, REAVIS, & POGUE, ATLANTA, GA.]

3503:mkt
974447-050-014
(404) 581-8953

December 8, 1993

Mr. Richard C. Porter, Jr.
Starks Building
Louisville, Kentucky 40202

Re: Louis J. Mattei, Sr.

Dear Mr. Porter:

I received your letter of October 20, 1993, to Dal Burton of this office regarding the Equifax Inc. Employees Thrift Plan (the "Plan"). In response to your inquiry concerning the status of Louis J. Mattei's account under the Plan (the "Account"), we understand from Equifax that the entire Account balance was distributed to Mr. Mattei's surviving spouse, Maria Mattei, in January of this year.

The only claim Equifax has received with respect to the Account has been from your client Ronald J. Mattei, as executor of the Louis J. Mattei, Sr. estate (the "Estate"). As we have explained in previous correspondence, the Estate is not the proper beneficiary of the Account. We have attached Bruce Wynn's letter to you dated August 19, 1992, which sets forth a history of the correspondence relating to your claim to benefits under the Plan on behalf of the Estate and our repeated denials of such claim.

To summarize briefly the reason for the denial of your client's claim for benefits, I will reiterate the reasoning set forth by Mr. Wynn in his August 19, 1993 [sic], letter:

Section 7.8(a) of the Plan states that upon the death of a married participant, the participant's vested account balance will be paid to the surviving spouse, unless there is no surviving spouse or unless the surviving spouse has consented in writing which is witnessed by a Plan representative or a notary public to the designation by the participant of another beneficiary.

The Antenuptial Contract (the "Contract") was, obviously, executed prior to the Matteis' marriage, and does not constitute a valid spousal waiver under Treasury Regulations. In addition, the Contract does not designate another beneficiary of the Account in accordance with Section 7.8(a) of the Plan and Section 401(a)(11) of the Internal Revenue Code. (For a detailed analysis of this point, see Bruce Wynn's letter.) Maria Mattei correctly received a distribution of the Account as his surviving spouse and sole beneficiary.

We agree with you that we would like to resolve this issue without the expense of litigation. We have, however, concluded that Maria Mattei was the proper beneficiary of the Account. We have provided you with a detailed explanation of the basis for this conclusion, and there is overwhelming authority to support that conclusion. Therefore, the Plan will seek attorneys' fees and costs from your client if you decide to file suit in this matter on your client's behalf.

Sincerely,
/s/ Susan D. Sipavich
Susan D. Sipavich

cc: James H. Landon, Esq.
R. Dal Burton, Esq.

APPENDIX L

[LETTERHEAD OF RICHARD C. PORTER,
ATTORNEY AT LAW]

March 21, 1994

TO: Mr. William Cooper, Attorney
Ackerson Yann & Miller
1800 One Riverfront Plaza
Louisville, KY 40202

Re: Estate of Louis Mattei

Dear Mr. Cooper:

My clients and I have just learned that the Equifax Thrift Plan of Louis Mattei, Sr., has been obtained by your client Maria Mattei from Equifax. We are quite surprised in view of the Antenuptial Contract in which she agreed not to take anything other than what the Antenuptial Contract generously provided her.

What is further surprising to my clients, however, is that Maria Mattei met with the three of them and her husband/ their father at Louis Mattei's house before he died so he could explain to all four of them that the Thrift Plan was to be the source of the periodic payments under the Antenuptial Contract. Everyone agreed to that disposition of the Thrift Plan. With her assent to that, my clients request that she immediately turn the assets she received from the Thrift Plan over to the Estate.

Please reply by April 1st.

Sincerely,
/s/ Richard C. Porter
Richard C. Porter

cc: Ronald Mattei
cc: Louis Mattei, Jr.
cc: Mary L. Mattei
cert mail #P074684 599
disc #5

APPENDIX M

[LETTERHEAD OF STITES & HARBISON, LOUISVILLE, KY.]

September 15, 1995

VIA TELECOPY

Joseph C. Oldham, Esq.
Ogden, Newell & Welch
1200 One Riverfront Plaza
Louisville, Kentucky 40202

Re: Estate of Louis J. Mattei, Sr. ("Estate")

Dear Joe:

As discussed, we have been retained by Maria Mattei in connection with the failure of the Estate to fulfill its obligations under Ms. Mattei's Antenuptial Contract, dated December 7, 1990 ("Contract").

Under the terms of the Contract, Ms. Mattei is entitled to receive $300 per week, as adjusted for inflation, from the Estate during her life and has a life estate in Mr. Mattei's residence. The Estate has failed to fulfill its obligation with respect to these weekly payments in two regards. First, the Estate has failed to make any weekly payments to Ms. Mattei since December 17, 1994. Further, beginning with the first payment due after Mr. Mattei's death on December 28, 1991, the Estate has failed to properly adjust Ms. Mattei's payment for inflation.

With respect to the inflation adjustment, the Contract requires the first inflation adjustment to be made on the first day of the year after the Contract was executed (which is January 1, 1991). However, the Estate delayed making the inflation adjustment until more than one year after payments to Ms. Mattei began — that is, the Estate first adjusted this payment as of January 1, 1993. Further, the Estate has applied an inflation adjustment of only $18 per year when the Contract requires the 6% inflation adjustment to be made to the payment amount in effect as of the

start of the year. Thus, under the terms of the Contract, Ms. Mattei is entitled to $318 per week for 1991, $337.08 per week for 1992, $357.30 per week for 1993, $378.74 per week for 1994 and $401.47 per week for 1995. Instead, Ms. Mattei has been paid only $300 per week for 1991 and 1992, $318 per week for 1993, and $336 per week for 1994.

Applying the 12% legal rate of interest for late payment, the Estate owes Ms. Mattei $25,091.94 as of September 30, 1995 as a result of the cessation of the weekly payments after December 17, 1994 and the failure to properly adjust Ms. Mattei's weekly payments for inflation. We have enclosed a copy of the present value calculation.

We understand that your clients take the position that the Estate does not need to make any weekly payments to Ms. Mattei after December 17, 1994 because Ms. Mattei received benefits under the deceased's thrift plan with Equifax. We find no support for this position under the terms of the Contract or under applicable law.

First, the Contract makes no attempt whatsoever to specifically waive any rights Ms. Mattei had under the Equifax thrift plan and, even if the Contract had included a waiver provision, the Contract would clearly be ineffective to waive these rights under ERISA. We understand that you agree with our reading of the law on this issue.

Second, the case law clearly establishes that Ms. Mattei has not relinquished her rights under the Contract by taking any thrift plan benefits to which she is legally entitled. The courts have reached this same result even in a much closer case where the antenuptial agreement specifically provided for the spouse to waive her rights under the plan. Callahan v. Hutsell, Callahan & Buchino P.S.C. Revised Profit Sharing Plan, 813 F. Supp 541 (W.D. Ky. 1992), vacated on other grounds, 14 F.3d 600 (6th Cir. 1993). Even with an express provision in the antenuptial agreement addressing the retirement plan benefits, the Callahan court rejected an argument that the spouse was trying to selectively enforce the antenuptial agreement. The court determined that the spouse was entitled to all amounts

payable to her under the antenuptial agreement in addition to any retirement benefits.

Third, we understand that your clients claim that the deceased intended for the weekly payments to Ms. Mattei to be satisfied out of his thrift plan benefit and that your clients have contemporaneous notes of a conversation with the deceased in which he expressed this intent. Fortunately, there is no need to determine whether this conversation occurred and what, if anything, may have been said regarding the thrift plan. The Contract clearly and unambiguously provides for the weekly payments to be paid from the Estate and, as such, any alleged conversations regarding the source of these payments are irrelevant.

We therefore see no legal basis for the Estate's refusal to pay Ms. Mattei all amounts to which she is entitled under the terms of the Contract. The Estate owes Ms. Mattei $25,091.94 under the Contract and if the Estate has not paid Ms. Mattei by September 30, 1995, we have been instructed to take all steps necessary to enforce Ms. Mattei's legal right to payment.

Further, to avoid any payment problems arising in the future, we desire that the Estate purchase an annuity contract (from an insurance company acceptable to Ms. Mattei) to provide for these payments in the future.

Also, Ms. Mattei has advised me that an appraiser has asked to set up an appointment to appraise the residence. Please let me know why an appraisal is being undertaken at this time.

We look forward to your clients' prompt response to this important matter.

Sincerely,
STITES & HARBISON
/s/ Susan Canter Reisner
Susan Canter Reisner

Enclosure
SCR:ljg
cc: Ms. Maria Mattei (w/encl.)
Mr. John A. Bartlett (w/encl.)
Mr. Robert W. Griffith (w/encl.)

APPENDIX N

[LETTERHEAD OF OGDEN NEWELL & WELCH, LOUISVILLE, KY.]

September 25, 1995

Ms. Susan Canter Reisner
Stites & Harbison
400 West Market Street, Suite 1800
Louisville, KY 40202-3352

Dear Susan:

I have received your letter of September 15. I believe you are losing sight of what the agreed arrangement was between Mr. and Mrs. Mattei. The arrangement was to permit Mrs. Mattei to live in the family residence until her death or remarriage. In addition, she was to receive $300 per week total (from all sources) increased at the annual rate of 6% until her death or remarriage. This is all that Mr. Mattei intended for Mrs. Mattei to receive.

As you know, Mrs. Mattei has actually received a great deal more than what she agreed to. She has received the house as agreed. She is getting at least $1,013.40 per month from the Equifax defined benefit plan. She received the weekly payments of $300 per week for many weeks, resulting in a large overpayment against the promise of $300 per week total. She receive approximately $250,000 from the Equifax thrift plan.

Mrs. Mattei has been overpaid by hundreds of thousands of dollars. There was a meeting held on March 10, 1991 at which Mr. Mattei, Sr., his son Lou, Marie Culver, his daughter Mary Lou Mattei, and his son Ron Mattei were in attendance. There was a full discussion at that meeting of the terms and conditions of what Mrs. Mattei was to receive under the terms of her agreement with Mr. Mattei. The agreement was not well-prepared. The attorney who drafted the agreement thought that he was covering all aspects of the understanding between the parties.

Mr. Mattei did not mean to leave virtually his entire estate to Mrs. Mattei. Mrs. Mattei's position at this time is inconsistent with her actions before and immediately after Mr. Mattei's death.

Our clients, which include the estate of Mr. Mattei and his children, know that Mrs. Mattei has been vastly overpaid against their father's wishes. They also know that litigation over this matter will be long and expensive. When Mrs. Mattei was represented by Mr. Cooper, we came close to settling the matter. The terms of that settlement were that everything would remain status quo except for the family residence. We had started the process for the appraisal of the family residence to negotiate what would happen with it. The goal was to completely separate the parties from any further financial dealings.

We are still willing to recommend to our clients that those negotiations continue. If you believe that the only alternative in this matter is to pursue the additional weekly payments, that alternative will be met with resistance as far as such resistance can be carried through the legal system. That is not what Mr. Mattei intended and his children will not voluntarily agree to such a conclusion.

If you would like to engage in some negotiations towards a settlement which is consistent with this letter, please let me know.

Yours very truly,
/s/ Joseph C. Oldham
Joseph C. Oldham

JCO/daw

cc: Mary Lou Mattei
Louis J. Mattei, Jr.
Ronald J. Mattei